



L. JOYCE HAMPERS
COMMISSIONER

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

October 28, 1982

("School") is an elementary school which provides instruction according to the tenets of the Orthodox Jewish religion. The School is a corporation organized under Chapter 180 of the Massachusetts General Laws. The School has not received a Massachusetts sales tax certificate of exemption (Form ST-2).

You state that the School has applied to the Internal Revenue Service for a determination letter establishing that it is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code ("Code") and has not yet received a reply. Generally organizations which file an application with the Internal Revenue Service for recognition of exemption from federal income taxation under Code Section 501(c)(3) within 15 months of the date of organization and which have their application approved are treated as exempt retroactive to the date of organization. U.S. Treas. Reg. 1.508-1(a).

General Laws Chapter 64H, Section 6(e) exempts from tax sales to any corporation, foundation, organization or institution exempt from taxation under Section 501(c)(3) of the Code which uses its purchases in the conduct of the organization and has first obtained a certificate of exemption from the Commissioner of Revenue.

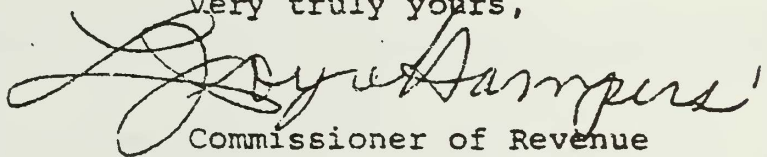
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You inquire whether the School will be entitled to an abatement on behalf of the vendors of the Massachusetts sales tax incurred prior to receipt of a Massachusetts certificate of exemption, if the federal exemption, once recognized, is retroactive to the School's date of organization.

Based on the foregoing, sales to the School are not exempt from the Massachusetts sales tax unless the School is exempt from federal taxation under Code Section 501(c)(3) and has first obtained a certificate of exemption (Form ST-2) from the Commissioner. Such certificate is not issued prior to receipt of a determination letter from the Internal Revenue Service that the organization is exempt from federal income taxation under Code Section 501(c)(3). Therefore, purchases made by the School prior to the receipt of the certificate of exemption (Form ST-2) will remain subject to the sales tax, whether or not the federal exemption is retroactive to the date of organization of the School.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Joy A. Sampers".

Commissioner of Revenue

LJH:JD:mf

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